

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**CLEOPHUS DAVIS, JR.,**

**Defendant.**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**CASE NO. 8:94CR42**

**MEMORANDUM AND ORDER**

This matter is before the Court on the following motions filed by the Defendant, Cleophus Davis, Jr.: a successive Motion Under 28 U.S.C. to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Filing No. 252), filed through counsel; for Leave to Proceed in Forma Pauperis on his § 2255 motion (Filing No. 253); to Appoint Counsel (Filing No. 254); and for Leave to Proceed in Forma Pauperis (Filing No. 258).

The Court stayed this matter pending the decision of the Eighth Circuit Court of Appeals regarding Davis's successive petition. Without opinion, the Eighth Circuit denied him authorization to file a successive petition in this Court. (Filing No. 260.)

Rule 9 of the Rules Governing Section 2255 Proceedings provides: "Before presenting a second or successive motion, the moving party must obtain an order from the appropriate court of appeals authorizing the district court to consider the motion, as required by 28 U.S.C. § 2255, para. 8." Because the Eighth Circuit denied Davis authorization to file his successive § 2255 motion, it must be denied.

**IT IS ORDERED:**

1. The Defendant's Motion Under 28 U.S.C. to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Filing No. 252) is denied;
2. The following motions are denied as moot:

- a. for Leave to Proceed in Forma Pauperis on his § 2255 motion (Filing No. 253);
  - b. to Appoint Counsel (Filing No. 254);
  - c. for Leave to Proceed in Forma Pauperis (Filing No. 258); and
3. A separate Judgment will be filed.

DATED this 9<sup>th</sup> day of October, 2009.

BY THE COURT:

S/Laurie Smith Camp  
United States District Judge